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SUPREME COURT OF THE UNITED STATES.

No. 74.

ROBERT MILNER, JOHN THOMPSON, DAVID PETRIKIN, AND LEVI WOODBURY, SECRETARY TREASURY, UNITED STATES, COMPLAINANTS IN ERROR,

vs.

GEORGE W. METZ, DEFENDANT IN ERROR.

ON APPEAL FROM CIRCUIT COURT U. S. FOR WASHINGTON, D. C.

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S. D. Langtree, Print.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to George W. Metz, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States on the second Monday of January next, pursuant to an appeal from the decree of the circuit court of the District of Columbia, sitting as a court of equity for Washington county, in a cause wherein you, George W. Metz, are complainant, and Robert Milnor, John Thompson, David Petrikin and Levi Woodbury, Secretary of the Treasury of the United States, are defendants, to shew cause why the said decree should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable W. Cranch, Chief Judge of the circuit court of the District of Columbia, the 4th day of December, A. D. 1840.

DISTRICT OF COLUMBIA, *ss.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of November, being the 23d day of the same month, in the year of our Lord one thousand eight hundred and forty, and of the Independence of the United States the 65th.

Present: The honorable William Cranch, Chief Judge, Buckner Thruston and James S. Morsell, Associate Judges; Alexander Hunter, Esquire, Marshal; William Brent, Clerk.

In the record of the proceedings of the said court, among others, are the following, to wit:

GEORGE W. METZ,
vs.
ROBERT MILNOR,
DAVID PETRIKIN, *et al.*

Be it remembered, that heretofore, to wit, on the twentieth day of May, in the year of our Lord one thousand eight hundred and forty, the said complainant, by Joseph H. Bradley, Esquire, his attorney, filed in the circuit court of the District of Columbia, sitting as a court of equity for Washington county, the following bill of complaint, to wit:

To the honorable the Judges of the Circuit Court of the District of Columbia, sitting in chancery, for Washington county:

Bill of Complaint.

The bill of complaint of George W. Metz, of the city of Philadelphia, and State of Pennsylvania, humbly sheweth, that on the 24th day of December, 1838, a certain Robert Milnor, (who he prays may be made defendant to this bill,) presented his petition to the honorable the judges of the court of common pleas of Philadelphia county, and State of Pennsylvania, for the relief provided for insolvent debtors, by the laws then existing in that Commonwealth, and annexed to his petition a schedule of his property, which he represented to consist solely of a claim on the Government of the United States, for about $3,774 50, and executed an assignment to your orator and one Aaron Ross, of all his estate, property, and effects whatsoever, to, for and upon the uses, trusts and purposes, designated by the act of the Commonwealth, entitled "an act relating to insolvent debtors," passed 16th June, 1836, and also a list of his creditors, so far as he could ascertain them, and the causes of his insolvency, and extent of his losses; that the said Aaron Ross, *that the said Aaron Ross* declined his appointment as trustee, and your orator was duly appointed trustee of said Robert Miller, and gave bond and security accordingly, all of which will more fully and at large appear by the records of the said court, a duly authenticated copy whereof is herewith filed as part of this bill, marked complainants Exhibit A, (copied in page .)

That long before the filing of his said petition, the said Robert Milnor had petitioned the Congress of the United States for compensation for extra services rendered by him as a gauger under the act of 4th July, 1836, and for pay for certain instruments and implements, which he had purchased and used in his official capacity, but which were kept and used by the United Sates after he had been removed from office; that the first of these claims had been presented jointly with one John Thompson, and the said Robert Milnor was entitled to one-half thereof, being $1,378 61, as will more fully appear by the petition of said Robert and the voucher thereof, now on file in the Treasury Department of the United States, a true copy of which your orator will procure, and present to your honors.

And your orator avers, that although said petition claimed a joint compensation for what appeared to be joint services rendered by said Milnor and Thompson, yet in truth and in fact, the interest of said Milnor and said Thompson was wholly distinct and separate, each of them being entitled to one equal half part of said claim distinct from the other; and the said petition was put in that shape according to a usage and understanding among the custom house officers at Philadelphia, and your orator prays that said John Thompson may be made defendant hereto. The other claim was

for a much smaller amount, and except these, your orator is not advised, nor does he believe that said Milnor had any claim upon the United States at the time of his said assignment, and this claim or these claims, if they be separate, were then pending before Congress, and was and were intended to be assigned to your orator by the said defendant, Milnor.

Your orator further shews, that the said petition of said Robert Milner, continued before, and was pressed upon Congress until the second day of May instant, when a bill was passed distinctly recognizing so much of said claim as sought compenstion for extra services, and directing the same to be paid, and your orator files herewith a copy of said bill, marked Exhibit B, (copied in page .) And on the 4th day of May, the said defendant, Milnor, made and executed a letter of attorney, empowering the honorable David Petrikin (who your orator prays may be made defendant to this bill) as his attorney, to receive the money they directed to be paid to said defendant, and the said Petrikin, applied for the same at the Treasury Department.

Your orator representing the said defendant as trustee under the said insolvent proceedings, also presented his claim upon the said fund, and required the same to be paid to him, but the honorable Levi Woodbury, Secretary of the Treasury, (and who he prays may be made defendant hereto,) refused to pay the same to your orator, and is now about to pay the same to said Petrikin, as attorney of said Milnor.

Your orator shows further, that said Milnor is utterly insolvent, and if he shall get possession of the said sum of $1,378 61, it will be wholly and irretrievably lost to your orator; that said Milnor has craftily disguised this, in order to defraud your orator as trustee and creditor, and the other creditors of said Robert Milnor, and your orator has not and cannot have adequate relief at common law; all which actings and doings of said Milnor are against equity and good conscience, and your orator can only have relief in equity: To the end, therefore, that said defendants may respectively on their corporal oaths, full, true, and perfect answers make to all and singular the matters and things hereinbefore set forth, as fully as if the same were again repeated, and that the said the Secretary of the Treasury be enjoined from paying, and the said John Thompson on his own account, or for the use of any other person, and the said Robert Milnor and David Petkirkin, and every other person for or on behalf of said Robert Milnor, from receiving the said sum of $1,378 61, part of the said sum appropriated by act of Congress of 2d May, 1840, entitled "An act for the relief of Robert Milnor and John Thompson, late guagers in the custom-house, Philadelphia," until the further order of this court; and that the said sum be decreed to belong to and be paid to your orator, and for such other and further relief in the premises as to your honor may seem meet, may please your honors to grant to your orator the writs of subpœna and injunction. And inasmuch as said Robert Milnor resides in the city

of Philadelphia, and out of the District of Columbia, may it please your honors to order the usual advertisement notifying the said Robert Milnor of the filing this bill and the substance thereof; and your orators in duty bound, &c.

GEO. W. METZ.

JOS. H. BRADLEY,
for Complainant.

CITY OF PHILADELPHIA, *ss.*

Before me the subscriber, an alderman in and for the said city, came George W. Metz, the within named complainant, and being duly sworn says, that the facts stated in the foregoing bill are true.

Witness my hand and seal, this sixteenth day of May, A. D.
[L. L.] 1840, at Philadelphia aforesaid.

ARMON DAVIS, *Alderman.*

Exhibit A, referred to in Complainant's Bill, page .

To the Honorable the Judges of the Court of Common Pleas of Philadelphia County.

The petition of Robert Milnor respectfully sheweth: That your petitioner by reason of sundry losses and misfortunes is now unable to pay and satisfy his just debts, and is therefore compelled to apply to your honorable court for the relief provided for insolvent debtors by the existing insolvent laws of this Commonwealth; that your petitioner resides in the county of Philadelphia, and has resided within the State of Pennsylvania six months immediately preceding this his application. And your petitioner has hereto annexed the following schedules:

1st. A statement of all the estate, effects, and property of the petitioner, wheresoever situate and of whatsoever kind.

2d. A statement of the debts due by him, containing the names of his creditors, the amount due to each, and the nature or character of the debt so far as he can ascertain the same.

3d. A statement of the causes of his insolvency, and of the extent of his losses.

Your petitioner therefore applies to your honorable court, and prays that your honors will grant him such relief as is prescribed by the existing insolvent laws of this Commonwealth.

ROBERT MILNOR.

Robert Milnor, the above named petitioner, being duly affirmed according to law, saith that the facts set forth in the above petition and in the annexed schedule or statements, are true.

ROBERT MILNOR.

Affirmed and subscribed before me, this 24th day of December, A. D. 1838.

J. S. LEUNEY,
Prothonotary.

A statement of all the estate, effects and property of the petitioner wheresoever situate and of whatsoever kind.

Your petitioner has no property of any kind, except the following claim, viz:

A claim on the Government of the United States for about $3,774 50.

Know all men by these presents, that I, Robert Milner, the above named petitioner, have assigned, transferred and set over, and by these presents do assign, transfer and set over unto George W. Metz and Aaron Ross, their heirs and assigns, all my estate, property and effects whatsoever, to, for, and upon the uses, trusts and purposes designated by the act entitled "an relating to insolvent debtors," passed the sixteenth day of A. D. one thousand eight hundred and thirty-six.

Witness my hand and seal, this eleventh day of January, A. D. 1839.

ROBERT MILNER, [L. S.]

Witness present.

A statement of the debts due by the petitioner, containing the names of his creditors, the amount due to each, and the nature and character of the debt, so far as he can ascertain the same.

Estate of L. Billings,	$33 37	Book account.	
G. C. Fisher, -	43	do	execution bonded.
J. C. Smith, -	7	do	Judgment.
M. Johnson, abs. -	12 20	do	
A. W. Tompkins, -	8 25	do	
Browning & Everett, -	68	do	
Isaac Wheaton -	31 56	do	
J. C. Thorne, -	9 75	do	Judgment.
Geo. Burkhart, -	9 70	do	"
J. McLaughlin, -	30 64	do	
Aaron Ross, -	684 62	do	Acceptance on H. Frye agent of Missouri Iron Co. dated 9 May, 1838. at 9 mo.
Geo. W. Metz, -	215 50	do	do do
M. C. Milnor, -	793 75	do	
George Brickman, -	32 50	do	Judgment.
Leet & Johnson, -	43 78	do	
G. W. Markley, -	18 75	do	
C. F. Thacker, -	34 25	do	Note dated Nov. 30, at 30 days.
John Moore, -	24	do	Judgment.
Wm. F. Pitfield, -	32	do	Note dated December 3d, at 30 days.

G. Zantzinger, -	27 75	Book account.	
John Powell -	8 75	do	
Cowell & Evans -	43 78	do	
R. Davenport, -	5 23	do	
C. Crean, - -	60	do	rent.

A statement of the causes of the petitioner's insolvency, and of the extent of his losses.

Your petitioner's insolvency has been occasioned by the deprivation of the office of United States guager, which has been his means of support of self and large family for many years past, and by the detention of monies due him by the Government of the United States.

ROBERT MILNOR.

(Petition Endorsed.)

130, Petition of Robert Milnor. Filed December 24th, 1838. Sworn and discharged January 11, 1839.

Understanding that the honorable the court of common pleas, have appointed or are about to appoint the undersigned, assignee in the case of Robert Milnor an insolvent debtor, discharged by the court at the last term, I do hereby respectfully decline such appointment, and ask to be excused from serving in snch capacity.

AARON ROSS.

Philadelphia, 2 March, 1839.

In the matter of Robert Milnor an insolvent.

George W. Metz, being duly sworn according to law, deposes and says, that the probable amount which will come into his hands as assignee of the said Robert Milnor, will not exceed two thousand dollars to the best of his knowledge and belief.

GEO. W. METZ.

Sworn and subscribed in open court, March 2d, 1839.

THOS. D. SMITH,
for Prothonotary.

And now March 2d, 1839, Aaron Ross, having declined the appointment of trustee conferred upon him, the court order that George W. Metz be the sole trustee, and that he give bond with approved security in one third more than the amount of property which may come into his possession.

By the Court,

T. D. SMITH.

March 2d, 1840. Bond given accordingly, George W. Metz, sole trustee of Robert Milnor in the sum of $2,700, and William Edwards approved as his surety by the court.

STATE OF PENNSYLVANIA, *Philadelphia County, ss.*

I, Samuel Hart, Prothonotary of the court of common pleas, for the county of Philadelphia, do certify that the within and foregoing is a true copy of the insolvent petition of Robert Milnor, as filed among the records of said court, together with all the orders of court and proceedings thereon.

And that the said Robert Milnor was discharged by the court as an insolvent debtor on the eleventh day of January, A. D. 1839.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court at Philadelphia, this fifth day of May, A. D. 1840. [L. S.]

S. HART,
Prothonotary.

PENNSYLVANIA, *Philadelphia County, ss.*

I, Edward King, Esquire, President of the first judicial district of Pennsylvania, and presiding judge of the court of common pleas, orphans court and court of general quarter sessions of the peace for the county of Philadelphia, do certify, that the foregoing certificate made by Samuel Hart, Esqnire, prothonatory of the said court of common pleas, whose name is thereto subscribed, and seal of office affixed, are in due form of law, and made by the proper office.

Witness my hand this fifth day of May, A. D. 1840.

EDWARD KING,
President, Judge first Jud'l Dis't Penn'.

Complainants' Exhibit B.

Complainants' Exhibit B. referred to in page

26TH CONGRESS, *1st Session.* H. R. 57.

(Rep. No. 70.)

March 3, 1840.

Read twice, and committed to a committe of the whole house, to-morrow.

Mr. Toland, from the Committee on Commerce, reported the following bill:

A Bill for the relief of Robert Milnor and John Thompson, late Guagers in the Custom House at Philadelphia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby directed, to pay to Robert Milnor and John Thompson the sum of two thousand seven hundred and fifty-seven dollars and twenty-three cents, being the

amount of fees, equitably due to said Milnor and Thompson, for extra services rendered by them as guagers at the port of Philadelphia, after the passage of the act of the fourth of July eighteen hundred and thirty-six, reducing the duties on wines, in reguaging certain wines then in custom stores in said port, and comeing within the provisions of said act, to be paid out of any money in the treasury not otherwise appropriated.

Complainants' Exhibit C.

Complainants Exhibit C. referred to at page

To the Honorable the Senate and House of Representatives of the United States in Congress, assembled.

The petition of Robert Milnor and John Thompson, late Guagers of the United States Customs for the District of Philadelphia. Respectfully sheweth,

That by the act of Congress of the 4th of July 1836 reducing the duties on wines, granted the benefit of the reduction to previous importations remaining in the custom house on the 30th of July following and consequently required it to be guaged. We were directed by the department here to perform that extra service, which imposed on your petitioners a laborious duty and an additional expense in the required performance thereof to each parcel or invoice of said wines. Your petitioners after guaging and ascertaining the quantity, noted the number of gallons on invoice, signed the same, and placed it on record in the department, for all which services they have received no compensation; they therefore pray your honorable body will grant them the usual allowance of twelve cents per cask beyond the limit of the annual maximum of $1,500 passed at a time when the said extra labour could not we presume have been contemplated nor intended as an addition to our regular duties by the framers of the law, without a corresponding compensation.

And your petitioners as in duty bound will ever pray.

ROBERT MILNOR, *for self*, and
JOHN THOMPSON, *late U. S. Gaugers, for the port of Philadelphia.*

Philadelphia, January 10, 1838.

Treasury Department.

Register's Office, November, 1840.

I certify the foregoing to be a true copy of the original on file in this office pr. Report No. 79,362.

T. L. SMITH,
Register of the Treasury U. S.

Complainants' Exhibit D.

Complainants, Exhibit D. referred to in page

To the Honorable the Senate and House of Representatives of the United States, in Congress assembled,

The petition of Robert Milnor, late of the United States Customs for the District of Philadelphia, respectfully sheweth;

That your petitioner heretofore uninformed of the usage of the Department of the Treasury, in relation to the facts as herein set forth, viz: that the contingent expences of weighers, markers and measurers, &c., have been allowed and paid, embracing the instruments and implements used in their official capacities, whilst your petitioner, as gauger, has been furnishing instruments, &c., for a series of years for the exclusive use of the United States gaugers department, and has not participated in those allowances, except for the years 1834, 1835, 1836 and 1837 (thus recognizing the justice and legality of the claim.)

That on the 13th day of February, 1837, your petitioner, at the port of Philadelphia, forwarded an account to the Treasury Department for moneys advanced for guaging instruments, and their repairs, &c., amounting to $443 07, (as per annexed account,) and that on the 13th of March following, the account was returned. Your petitioner most respectfully refers your honorable body to the circular instructions of Mr. Controller Anderson, dated 25th August, 1823, to collectors, naval officers, and surveyors, in the following words, "by the circular from the Department of the 29th January last, you were requested to charge the payments to inspectors, guagers, weighers, and measurers, the disbursements on account of contingent expences, revenue boats, &c., under separate and distinct heads, &c.; under the head of disbursements on account of contingent expences, you were to include postage of letters on public business, printing licences and certificates to accompany distilled spirits, wines, and teas, expence of scales and weights, tubs, padlock, guaging instruments, and mending the same."

Your petitioner therefore most respectfully requests of your honorable body, to grant authority to the proper officers of the Treasury Department, to pay the said account hereinbefore named; and your petitioner as in duty bound, will ever pray.

Signed ROBERT MILNOR.

Late U. S. Guager for the port of Philadelphia.

Philadelphia, January 12, 1838.

A true copy of the original petition on file in the clerk's office of the House of Representatives of the United States.

Attest: B. B. FRENCH,
Chief Clerk.

November 21, 1840.

Complainants' Exhibit E.

Complainants' Exhibit E. referred to in page

26th CONGRESS,
1*st Session.* H. R. 58.

(Report No. 71.)

March 3, 1840.

Read twice, and committed to a committee of the whole House, to-morrow.

Mr. Toland, from the Committee on Commerce, reported the following bill:

A Bill for the relief of Robert Milnor, late guager in the custom-house, at Philadelphia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be directed to pay to Robert Milnor, late guager in the custom-house at Philadelphia, out of any money in the Treasury not otherwise appropriated, the sum of four hundred and forty-three dollars and seventeen cents, for the expences of guaging instruments and mending the same, from January seventeen, eighteen hundred and twenty-one, to August four, eighteen hundred aud thirty-three, inclusive.

Complainants' Evidence.

Complainants' Evidence.

United States, to Robert Milnor and John Thomson, Dr.

For guaging and ascertaining the quantity of wines in the custom-house stores and under custom-house locks, as per accounts of January 1, 1834, and March 4th, and July 4th, 1836, as per reference on the back of the bill.

Date of entry ——— No. of casks, No. of boxes, &c., guaged, gallons, &c., &c.

Then follows a list of articles guaged in detail with the fees on each, making an aggregate of - - - $2,757 23

At the bottom of it is this certificate.

I certify the above to be just.

Surveyor's office, January, 29, 1838.
Signed A. FORD, *Dep. Surveyor.*

Then follows on the next page.

We, Robert Milnor and John Thomson, late United States guagers, for the district of Philadelphia, do hereby certify on our affir-

mations, that we have performed the services stated in the within account, and that the same is justly due to us.

Signed ROBERT MILNOR,
JOHN THOMSON.

Affirmed and subscribed, this 29th day of January, 1838, before me.

Signed J. BURDEN, *Alderman.*

Then follows apparently in the hand writing of R. Milnor.

N. B. *Vide* 23d article of the 2d section of the act of 14th July, 1832; 23d section of an act of the 2d March, 1833; and the Comptroller's circular of the 12th August, 1833, and 18th February, 1834; and of an act of Congress of the 4th of July, 1836; and circular of the Comptroller of the 11th July, 1836.

Then follows in the hand writing of A. Ford, deputy surveyor.

SURVEYOR'S OFFICE, PHILADELPHIA,
January 14, 1839.

I certify, that in pursuance of instructions received at this office from the collector, the guagers then at this port, Mr. Robert Milnor and Mr. John Thomson, were directed by the surveyor to guage the packages and return the quantity of wines in store, which were entitled to reduced duty, under the 23d article of the 2d section of the act of Congress of the 14th of July 1832, and 3d section of an act of the 2d of March, 1833, and of the Comptroller's circular of the 12th August, 1833, and 18th of February, 1834, and of an act of Congress of the 4th of July, 1836, and circular of the Comptroller of the 11th of July, 1836; and that they correctly and faithfully performed those duties as stated in the aforegoing account, the work being, I consider seperate and distinct from their regular duties of attending to guagable articles to be landed from foreign ports, or re-shipped to foreign ports entitled to debenture, but indispensable to the accomplishment of the provisions of the acts of Congress above referred to. The charges introduced into their account now claimed for, being such as are according to law.

Signed ATHAUS FORD,
Dep. Sur. and Dep. Ins'r of the Revenue.

Extract from Attorney General's Opinion.

Extract from Attorney General's Opinion.

After stating the case, he goes on: In reply to your inquiry, I have the honor to state, that in my opinion, there is no authority in the Treasury Department to make payment except in accordance with the explicit directions of the act of Congress. Any other course would necessarily involve the department in the investiga-

tion of facts, and an examination of legal rights under the local statutes of Pennsylvania between the parties, and which ought to be left to the settlement of the proper judicial tribunal. It would also give to the language of the act a meaning different from its plain import, which was to confer at the time of its passage on the persons actually named, the gratuity to which they had no legal claim. For the accounting officers to undertake, in the innumerable cases in which Congress directs specific sums to be paid to individuals, to examine and settle previously existing claims of credits against such individuals, instead of pursuing the plain directions of the act, would have the effect of interfering with the legislation of Congress in a manner not warranted, in my opinion, by any existing law. Nor does it interfere in any way with the legal rights of such claimants. They can look to the fund in whose hands soever it may come, by virtue of the act of Congress, &c. &c. (by legal proceedings.)

Iam therefore of the opinion that the Treasury Department is not authorized to pay the sum appropriated to any other person than those directed by the act of Congress, namely, Robert Milner and John Thomson, or their duly constituted attorney. Goes on to advise notice of the time of payment to all claimants.

Date May 13, 1840.

Whereupon subpœna and injunction issued as prayed, returnable on the first Monday of June next.

At which mentioned first Monday of June, in the year of our Lord one thousand eight hundred and forty, and the day of the return of the said writ of subpœna, comes into the circuit court here, the said complainant, by his solicitor aforesaid, and the marshal of the district aforesaid, to whom the said subpœna was directed, makes return thereof to the court here, thus endorsed, to wit :

"Summoned and injoined Secretary of the Treasury. 'Non sunt" the rest.

A. HUNTER, *Marshal.*

Thereupon the said cause was regularly continued at rules until the first Monday of July, A. D. 1840, when the Honorable Levi Woodbury, Secretary of the Treasury of the United States, by Francis S. Key, his solicitor, files in court here the following, the answers :

Answer of Woodbury.

Answer of the Hon. Levi Woodbury, Secretary of the Treasury of the United States.

To the Honorable the Judges of the Circuit Court of the District of Columbia, as a Court of Equity, now sitting :

The separate answer of Levi Woodbury, Secretary of the Treasury of the United States to the bill of complaint of George W. Metz.

This defendant protesting against the jurisdiction and authority of the court to compel his appearance and answer as Secretary of the Treasury of the United States to said bill, and to control by injunction the discharge of his official duties, yet answers and says that he knows nothing of the facts charged in the said bill and does not admit the same, but requires that they should be proved to the satisfaction of the court.

Nor does he recognize or admit any right or title, as stated in said bill of the said complainant to the relief he seeks thereby, but calls on him to prove the same, and leaves the whole matter of said bill to the adjudication of the court, admitting that the money appropriated by the act of Congress stated in said bill is in the Treasury of the United States, at all times ready to be paid to whosoever is lawfully entitled to the same.

Wherefore he prays to be dismissed with his reasonable costs to himto be adjudged, &c., &c.

F. S. KEY,
United States Attorney, Sol. for Defendant.

Voluntary Appearance of D. Petrikin, R. Milner, and J. Thompson.

Nevertheless, the Honorable David Petrikin, by Francis S. Key, Esquire, his solicitor, and the said Robert Milner and John Thompson, by Clement Cox, Esquire, their solicitor, voluntarily appear, and file in court here their several answers, to wit:

Answer of D. Petrikin.

Answer of the Honorable David Petrikin.

To the Honorable the Judges of the Circuit Court of the District of Columbia, for the County of Washington, as a Court of Equity now sitting.

The separate Answer of David Petrikin to the Bill of Complaint of *of* George W. Metz.

This defendant reserving all benefit of exception to the said bill, so far as he is advised it is material and proper for him to answer thereto, answers and says:

That it is true, as charged in said bill, that he received a power of attorney from Robert Milner, empowering him to receive the money directed to be paid to said Milner by the act of Congress mentioned in the said bill; and that he called at the Treasury of the United States and demanded the same, the payment of which was refused on account of the interference of the claimant.

Farther than this, this deponent knows nothing of the facts charged in said bill, and does not admit the same, but requires that said complainant shall be compelled to prove the same to the satisfaction of the court. Neither does he admit, but denies, all right,

in law or equity, of the said complainant to receive the said money, or to obtain the relief he seeks.

This defendant has no interest whatever in said money, or in this controversy, and submits himself to the judgment of the court, praying to be hence dismissed with his reasonable costs to him to be adjudged, &c., &c.

F. S. KEY,
Solicitor for Defendant.

Answer of R. Milner.

Answer of Robert Milner.

Separate answer of Robert Milner to the Bill of Complaint of George W. Metz, Complainant, against himself and others, defendants, in the Circuit Court of the District of Columbia, for the County of Washington, sitting as a Court of Chancery.

This respondent, saving and reserving to himself, now and at all times, all manner of exception to the said bill of complaint, for the manifold errors and imperfections therein apparent, nevertheless, now answering the same, in so far as advised that an answer from him may be material, for answer, says:

That the several allegations of said bill, from the commencement thereof to the introduction of complainant's exhibit A, (copied in page) and for the verity of which, reference is made to said exhibit, or the records of which said exhibit is a true copy, are each and every of them true.

Respondent further saith, that in the year 1820, he received the appointment of United States guager for the port of Philadelphia, and continued to hold that appointment, and exercise the proper functions thereof, from that time until the month of December, 1837; that, growing out of his said appointment, at the time of his petition set forth in his said exhibit, and long prior thereto, there had accrued to him four several claims against the Government of the United States which had been rejected by the officers of the treasury and custom-house department, and two of which were before the Congress of the United States on his petition for the payment of the same; those claims have been partially acted on, but not finally decided by Congress, and are still pending before that body, and are those referred to, and intended to be included in respondents schedule set forth in said exhibit; they are these:

1. A claim for instruments provided by respondent for the United States guager's department at Philadelphia, used by him in his official capacity as guager, and kept and used by the United States, after the respondent had been removed from office - - - - - $443 17

2. A claim for moneys withheld from respondent as guager, as aforesaid, under a misconstruction of the law regulating salaries, about - -	611 40
3. A claim, as guager aforesaid, for such portion of bills rendered and unpaid, confirmed as due agreeably to the written opinion of Chancellor Kent obtained by the New York guagers in favor of guagers' claim to their dues, as not included in law regulating salaries - - -	2,119 98
4. A claim for cash expended for the incidental expenses of the office of United States guager allowed other officers - - - -	600 00
	$3,774 55

At the time of respondent's petition, set forth in said exhibit, he had made a note of the above four claims in detail, with the view of inserting them in that form in his schedule ; but, in the absence of his counsel, they were erased by a young attorney of the court to which the petition was addressed, and the general description given in the schedule substituted; in which respondent acquiesced, not foreseeing that it might lead to error or misconception in any quarter. Respondent, however, avers that complainant, before the commencement of the present suit, was fully apprised by him that the aforegoing were the only claims meant to be included in the aforesaid schedule under the description therein given. Complainant also well knew, before the 2d May, 1840, of the pendency before Congress of a distinct claim of John Thompson and respondent, to be presently described, and never set up any claim of right or control over the same, nor took any part in the prosecution thereof, until after said date. Said last claim is the same mentioned by complainant as being for compensation for extra services rendered by respondent as guager, as aforesaid, under the act of July 4, 1836, and is as follows:

Respondent and said Thompson had, in common, rendered extensive extra services under that act, and prior to January 1, 1838, in reguaging certain wines and liquors previously guaged and remaining in the custom-house stores, which were entitled to drawback, in consequence of a reduction of duties, or of the articles being exempted from duty, under said act of July 4, 1836. For these services, there proved to be no law providing any compensation by the Government of the United States, and as guagers, they were prohibited from receiving compensation from the merchants for whose benefit the services were rendered. They were, therefore, led, in February, 1838, to present their joint petition to Congress, setting forth the facts and asking remuneration. The petition was renewed as often as necessary, and continued until on or about the 2d May, 1840, when it was gratified by an act entitled An act for

the relief of Robert Milner and John Thompson, late guagers in the custom-house in Philadelphia, giving the petitioners, equally between them, the sum of twenty-seven hundred and fifty-seven twenty-two one-hundredths dollars, being the remuneration asked; the services were rendered in common, each party contributing his proper share thereof, and with the understanding that the compensation should be equally shared and divided between the parties. The petition to Congress was joint because that form seemed the more appropriate and convenient, and from no usage or understanding of the custom-house officers at Philadelphia requiring it to be so: the remuneration was asked as a boon, and respondent has understood and believes was advocated and granted as a gratuity; the form of the act was acceptable to the petitioners; the character of this claim was materially variant from that of the four claims first mentioned, and was considered by respondent as being properly excluded from, whilst those others were included in, the schedule aforesaid. Repondent admits his power of attorney to the Hon. David Petrikin, as charged, and the action thereon of the latter, as charged, the interposition of the complainant's claim, and the decision of the Secretary of the Treasury, also as charged. He denies all fraud, or purpose of fraud, as unjustly charged; he denies that complainant's bill exhibits any equitable ground for the relief sought therein, and craves the benefit of this objection as a defence to said bill, equally as if it had been ever so formerly taken and pleaded by way of demurrer; and he prays to be hence dismissed with his proper costs, &c.

ROBERT MILNER.

C. Cox, *Solicitor.*

STATE OF PENNSYLVANIA, *City of Philadelphia, ss.*

On this 28th day of July, 1840, before the subscriber, mayor of the said city, personally appears Robert Milnor, the above defendant, and makes affirmation that the facts set forth in the aforegoing answer so far as stated of his own knowledge are true, and he believes the others to be so.

In testimony whereof, I have hereunto set my name and [L. S.] affixed the city seal.

JN. SWIFT, *Mayor.*

Answer of John Thompson.

Answer of J. Thompson.

Separate Answer of John Thompson, to the Bill of Complaint of George W. Metz, Complainant, against himself and others, Defendants, in the Circuit Court District of Columbia, sitting as a Court of Chancery.

This respondent, saving and reserving to himself all manner of exceptions to the said bill of complaint, so far as advised that an

answer from him may be material, for answer saith: That he, the said respondent, and Dr. Robert Milnor, as guagers, had in common rendered extensive extra services under the act of July 4th, 1836, and prior to January, 1838, in reguaging certain wines and liquors, previously guaged and remaining in the custom house stores, which were entitled to a drawback in consequence of a reduction of duties on the articles being exempted from duties under the said act. For these services there proved to be *now* law providing any compensation by the Government of the United States, and as guagers they were prevented from receiving compensation from the merchants for whose benefit the services were rendered. They therefore presented their joint petition to Congress in February, 1838, setting forth the facts, and asking remuneration. The petition was renewed as often as necessary, and continued until on or about the 2d May, 1840, when it was gratified by an act entitled An act for the relief of Robert Milnor and John Thompson, late guagers in the custom house in Philadelphia, giving the petitioners, equally between them, the sum of $2,757 22, being the remuneration asked. The services were rendered in common, with the understanding that the compensation should be equally shared and divided. The petition to Congress was joint, because that form was most convenient, and not from any usage of the custom house requiring it to be so. The remuneration was asked as above, and the respondent has understood and believes was advocated and granted as a gratuity.

Your respondent further saith, that this is the extent of his knowledge as respects the matters of the complainant's complaint. He does not now, and never did, owe the complainant any sum of money, either as trustee or otherwise, and he denies all fraud or purposes of fraud, as unjustly charged, and prays to be hence dismissed with his proper costs.

JOHN THOMPSON.

STATE OF PENNSYLVANIA, *City of Philadelphia, ss.*

On this tenth day of August, 1840, before the subscriber, mayor of said city, personally appears John Thompson, the above named defendant, and makes oath that the facts set forth in the foregoing answer so far as stated of his own knowledge are true, and he believes the others to be so.

In testimony whereof, I have hereunto set my hand and [L. S.] affixed the city seal.

M. SWIFT, *Mayor.*

Rule—Replication.

Whereupon, on motion of the said defendants, by their solicitor aforesaid, and by order of the court here therein, it was ruled by

the said court, that the said complainant enter a general replication to the answers aforesaid, of the said defendants, or in default thereof that the said bill be dismissed.

General Replication.

Thereupon the said complainant, by his solicitor aforesaid, filed in court here the following general replication, to wit:

The complainant, saving and reserving to himself all and all manner of exceptions, &c., for replication to the answers of said defendants, saith, that he doth and will aver, maintain, and prove his said bill to be true and sufficient in the law to be answered unto by said defendants; and that the answers are very evasive, uncertain, and insufficient in the law to be replied unto by the repliant, without that, &c.

JOS. H. BRADLEY,
Sol. for Complt.

Whereupon the said cause was regularly continued at rules until the first Monday of Ootober, in the year of our Lord one thousand eight hundred and forty, when the said defendants, by their solicitors aforesaid, moved the court that the said injunction be dissolved for want of equity.

Cause set for Hearing by Consent.

Thereupon the said cause was regularly continued at rules until the fourth Monday of November next, when with the consent of parties, by their solicitors aforesaid, the said cause is set for hearing on the bill, answers, exhibits and general replication.

Decree making Judgment perpetual, and ordering Secretary to pay.

And the same having been seen and read by the court, and the parties by their solicitors being heard, and the matter being fully understood, the court passed the following decree in the premises, to wit:

GEORGE W. MITZ *vs.* ROBERT MILNER, JOHN THOMPSON, DAVID PETRIKIN, and LEVI WOODBURY, Secretary of the Treasury of of the United States.	In Chancery, Nov. Term, 1840.

This cause coming on to be heard upon the bill, answers, exhibits, general replication, and evidence, by consent of parties, and the argument of counsel, and the same having been seen, read, heard, and considered by the court, it is, this first day of December, Anno Domini eighteen hundred and forty, adjudged, ordered and decreed by the court, that the injunction heretofore granted in this cause

be, and the same is hereby, made and declared perpetual; and the court proceeding further to make a final decree in the said cause, do hereby adjudge, order, and decree that the said George W. Metz be entitled to receive from the Secretary of the Treasury the sum of money in the bill of complaint sought to be recovered, each party to pay his own costs.

By order of the court.

Test: W. BRENT, *Clerk.*

Appeal prayed to Supreme Court, and granted.

Thereupon the said defendants, by their solicitor aforesaid, pray an appeal from the said judgment and decree aforesaid made by the court in the premises, to the Supreme Court of the United States, and to them it is granted.

Whereupon the said Robert Milner filed in court here the following appeal bond, to wit:

Copy of Appeal Bond.

Know all men by these presents, that we, Robert Milner and William H. Thaip, of the city of Philadelphia, are held and firmly bound unto George W. Metz, in the full and just sum of eight hundred dollars, current money of the United States, to be paid to the said George W. Metz, his certain attorney, executors, administrators or assigns, to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this day of December, in the year one thousand eight hundred and forty.

Whereas, lately, at a circuit court of the District of Columbia, sitting as a court of equity for Washington county, in a cause wherein the said George W. Metz was complainant, and the said Robert Milner, John Thompson, David Petrikin, and Levi Woodbury, Secretary of the Treasury of the United States, were defendants, a decree was rendered against the said defendants, and they having entered an appeal to the Supreme Court of the United States.

Now the condition of the above obligation is such, that if the said Robert Milner shall prosecute his appeal with effect, and answer all damages and costs, if he fails to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

ROBERT MILNER, [L. S.]
WILLIAM H. THARP. [L. S.]

Signed, sealed, and delivered in the presence of
J. P. NORRIS, Jr.

Clerk's Certificate and Seal.

And the same being approved of, it is ordered that a record of the proceedings aforesaid, with all things thereunto relating, with the citation, be transmitted to the said Supreme Court, which is done accordingly.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at the city of Washington, this 11th day of January, 1841. [L. S.]

W. BRENT, *Clerk.*

SUPREME COURT.

MILNOR et al. *ads.* METZ.

In this cause it is agreed that the appellant, Milnor, during the years 1836 and 1837, as guager of the port of Philadelphia, received the full maximum compensation allowed by then existing laws to such officers.

JOS. H. BRADLEY,
For Compl'ts.
CLEMENT COX,
For Def'ts.

Vs

Milner & als

In Chancery

In this cause it is agreed that the letter of D. Petrikin may be read in evidence, to have the same effect as his deposition taken under an order of the Court: It is also agreed that on the trial of the Appeal to the Supreme Court either party may read in evidence the Bill in the House of Reps. No 227 of 2d Sess. 25th Congress: George A. Graham's Certificate of October 29. 1840. The Treasury Circular of July 11. 1836 and a Copy of James Kent's opinion of July 10. 1835 in a case submitted to him by the New York Guagers, without being copied in the Records and also the Account and Certificate signed by Athanasius Lord &c.

Jos. H. Bradley Sol.
for Compl.

Clement Cox Sol.
for Deft.

Copy Test W. Brent Clk.

Filed 6th Feby 1841.